

AMY H. HANTHORN

IBLA 76-522

Decided November 4, 1976

Appeal from a decision of the California State Office, Bureau of Land Management, rejecting oil and gas lease offer CA 3524.

Affirmed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases:
Applications: Drawings

Failure to execute fully an oil and gas drawing entry card (by omitting the zip code) properly results in the rejection of the offer.

2. Oil and Gas Leases: Applications: Generally -- Oil and Gas
Leases: Applications: Drawings

A drawing entry card oil and gas lease offer given first priority in a drawing in the simultaneous filing procedure creates no vested right to a lease in the offeror, but merely the right of having her offer considered first for the parcel described. If the drawing entry card is defective, it must be rejected.

APPEARANCES: Eugene A. Reidy, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Amy H. Hanthorn has appealed from a decision dated February 18, 1976, wherein the California State Office, Bureau of Land Management, rejected her oil and gas lease offer CA 3524. The stated basis for the rejection was that the offer had been submitted on a "Simultaneous Oil and Gas Entry Card" which had not been fully executed as required by the regulation, 43 CFR 3112.2-1. The space in which the zip code of the address was to be inserted had been left blank.

[1] This Board has held on many occasions that failure to execute fully a drawing entry card lease offer properly results in the rejection of that offer. Beverly J. Steinbeck, 27 IBLA 249 (1976) (zip code omitted); Jerry Van Waardhuizen, 26 IBLA 152 (1976) (state omitted); Ishmael Guerra, 26 IBLA 116 (1976) (state omitted); Ray Granat, 25 IBLA 115 (1976) (state omitted); 1/ John R. Mimick, 25 IBLA 107 (1976) (date omitted); 2/ Herbert W. Schollmeyer, 25 IBLA 393 (1976) (date and signature omitted); Albert E. Mitchell III, 20 IBLA 302 (1975) (state omitted). See Joseph A. Winkler, 24 IBLA 380 (1976) (ambiguity as to corporate status); Ray Flamm, 24 IBLA 10 (1976) (postdating of entry card).

In Albert E. Mitchell III, *supra*, the Board stated at 303:

The appropriate regulation, 43 CFR 3112.2-1(a), provides that

Offers to lease such designated leasing units by parcel numbers must be submitted on a form approved by the Director, "Simultaneous Oil and Gas Entry Card" signed and fully executed by the applicant or his duly authorized agent in his behalf. * * * [Emphasis added.]

By notice published in the Federal Register, BLM Form 3112-1 (May 1974) was designated as the correct form of lease offer, 39 F.R. 24523 (1974). That same notice contained the statement that:

Failure to complete any part of the card will disqualify the applicant for participation in the drawing and will result in the retention of the \$ 10 filing fee by the Federal Government as a service charge.

The reason for this policy is clear. In order to process the increasingly large number of simultaneous offers certain procedures must be followed which for their successful operation require complete cooperation and accuracy on the part of applicants. See Mountain Fuel Supply Co., 13 IBLA 85, 87 (1973). The regulation and notice makes it clear that no mistakes will be permitted and that the \$ 10 filing fee is "earned" at the time of filing. * * * [Footnote omitted; emphasis supplied.]

1/ Judicial review is pending.

2/ Judicial review is pending.

The obligation to complete the space for the zip code is as mandatory as the obligation to complete the space provided for the State or the parcel number. It is an item specifically required and the consequences of failing to supply it should be the same as those flowing from the failure to furnish any other item of information required by the entry drawing card. Therefore, the rejection of the offer was proper.

[2] Appellant argues that, having had her drawing entry card drawn with first priority, BLM had accepted her offer to lease and the offer may not now be rejected for any reason whatsoever. Appellant misunderstands the function of the drawing procedure. The drawing is merely to determine which offer will be first considered for a specific parcel of land. The drawing of an offer for a noncompetitive oil and gas lease in the simultaneous filing procedure of BLM creates no vested right in the offeror. Paula J. Jones, 24 IBLA 76 (1976). The proposition of appellant that the mere drawing of first priority of consideration invests her with an irrevocable right to receive a lease is simply not correct. As we said in Lloyd W. Levi, 19 IBLA 201, 202 (1975):

The law is well-settled that if an oil and gas lease is to be issued for a particular tract, it must be issued to the qualified person who first applied. * * * The filing of a noncompetitive oil and gas lease offer does not generate any legal interest, Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966), other than the preference right accorded to the first qualified applicant. Even where an applicant is the first-qualified applicant the Department retains its discretion to reject his application. Haley v. Seaton, 281 F.2d 620 (D.C. Cir. 1960). An applicant has no right to compel a lease under the Mineral Leasing Act, Pease v. Udall, 332 F.2d 62 (9th Cir. 1964).

Where the drawing entry card drawn first is not fully executed, that card must be rejected and its offeror may not be considered to be the first qualified applicant entitled to a preference right to a lease.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Newton Frishberg
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

